

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7580 of 1998

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SUNDANDABEN VISWAVIHARI                      DURKAL

Versus

GUJARAT MIDDLE- CLASS HOUSING SOCIETY LTD.  
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Appearance:

MR PB MAJMUDAR for Petitioner

MR SHITAL R PATEL for Respondent No. 1  
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CORAM : MR.JUSTICE M.S.PARIKH

Date of Order: 30/09/98

ORAL ORDER

This petition has been directed against the impugned order dated 28th August, 1998 passed below exh. 4 by the learned Single Member of the Gujarat Cooperative Tribunal in appeal which is pending before the tribunal. The petitioner filed the said appeal against the judgment and order passed by the learned Board of Nominee on 4th August, 1998 in Lavad Suit No.2197 of 1996 filed by the present petitioner. By the said decision, the learned Board of Nominee dismissed the suit of the petitioner which was essentially filed on the ground of alleged nuisance and/or annoyance likely to be caused by the proposed construction of the flats by respondent No. 4 on whose behalf, Mr. Patel appears on caveat.

2. At the outset, it might be noted that Mr. Patel, learned advocate appearing for respondent No. 4 fairly submits that the respondent No. 4 will file undertaking before the tribunal inter alia stating therein that the construction which respondent No. 4 will carry out during the pendency of the appeal will be subject to the result of the appeal and the said respondents will not claim any equity in respect of such construction. He further submits that such undertaking will be filed within a week from today. He has next submitted that the respondents will also state in the said undertaking that respondent No. 4 will not take any trucks or heavy motor

vehicle in the passage admeasuring 15 ft. in width and whatever goods and/or materials which are required to be taken to the property in question will be taken by hand cart and/or auto rickshaw. Based on such statement made by Mr. A.J.Patel, learned advocate appearing for respondent No. 4 on caveat, following order is passed :

It is made clear that the petitioner has filed this petition against the interim order. When the appeal is pending and the learned single member of the Tribunal has passed interim order after assigning reasons, it is hereby directed that the appeal shall be decided without being influenced either by the interim order passed by the tribunal as well as this order. Besides, the learned tribunal is directed to hear and decide the appeal as expeditiously as possible. It will be open for the petitioner to move the tribunal for fixing early date of hearing of the appeal. However, in view of what is stated above and since it is a petition against the order passed in interim injunction application, no indulgence can be shown. Same is, therefore, rejected. No cost.

30.9.1998. (M.S.Parikh,J.)

Vyas